

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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14 Before the Court is Defendant's Motion to Correct his Judgment and Commitment  
15 [sic] Order Dated December 12, 2005 (#129, filed March 26, 2012). The motion is totally without  
16 merit and will be summarily denied.

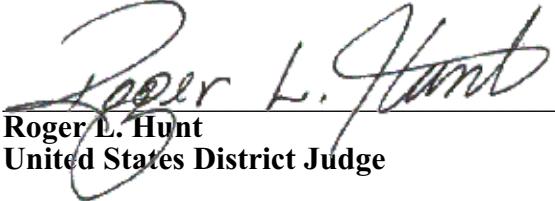
Defendant argues that the judgment and sentence are ambiguous because the Court, after sentencing the Defendant to 235 months to be run consecutively with any undischarged state sentence, pronounced an alternative sentence if, upon appeal, the Ninth Circuit found that the Armed Career Criminal Offender–Armed Career Criminal Act does not apply.

21 The sentence is not ambiguous. It establishes an alternative sentence IF a certain and  
22 specified act occurs. That did not occur. Defendant appealed the application of the Armed Career  
23 Criminal Act and it was upheld. He also filed a motion pursuant to 28 U.S.C. § 2255 attacking the  
24 application of the Act. That motion was denied and an unsuccessful appeal followed. Accordingly,  
25 the sentence was not ambiguous merely because it provided an alternative to avoid a resentencing  
26 should the Court of Appeals reach a different result. It did not.

1 IT IS THEREFORE ORDERED that Defendant's Motion to Correct his Judgment and  
2 Committment [sic] Order Dated December 12, 2005 (#129) is DENIED.

3 IT IS FURTHER ORDERED that no Certificate of Appealability issue as this issue has  
4 previously been resolved by the Circuit Court of Appeals on more than one occasion.

5 Dated: March 27, 2012.

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7 **Roger L. Hunt**  
8 **United States District Judge**

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